

1 HONORABLE RICHARD A. JONES
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13 UNITED STATES DISTRICT COURT
14 WESTERN DISTRICT OF WASHINGTON
15 AT SEATTLE

16 CHEYANNE DIXSON,
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Plaintiff,

v.

CITY OF ISSAQAH POLICE
19 DEPARTMENT, *et al.*,

Defendants.

Case No. 2:22-cv-1771 RAJ

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT**

20 **I. INTRODUCTION**

21 This matter comes before the Court on Defendant's motion for summary
22 judgment. Dkt. # 21. For the reasons below, the Court **GRANTS** the motion.

23 **II. BACKGROUND**

24 In September 2021, the City of Issaquah ("City") imposed a vaccination
25 requirement for City employees in response to a spike during the COVID-19 pandemic.
26 Dkt. # 23-1 at 17. Plaintiff Cheyanne Dixson, a patrol officer in the City's Police
27 Department, requested a religious exemption from the requirement. *Id.* at 27. Dixson

1 believes in the Christian religion. *Id.* She sought a religion exemption based on: (1) the
2 betrayal of faith as God as her ultimate healer; (2) the corruption of blood with unnatural
3 components not created by God; and (3) the use of aborted fetal tissue in the manufacture
4 of COVID-19 vaccine in disregard of the sanctity of life. *Id.*

5 On October 1, 2021, the City informed Dixson that it was granting her exemption
6 request, but it would need more time to evaluate whether a reasonable accommodation
7 was available and whether that accommodation posed an undue hardship. *Id.* at 32-33.
8 Several weeks later, the City sent Dixson a letter explaining that it would not be able to
9 accommodate her in performing her police officer duties unvaccinated without imposing
10 an undue hardship on the City. *Id.* at 35. In analyzing whether an accommodation could
11 be made, the City explained that it would evaluate the duties, responsibilities and
12 working conditions of the police officer position. *Id.* at 33. Relevant factors included: the
13 daily direct contact that police officers have with the public when delivering services, the
14 workplace environment where police officers are subject to close contact with other
15 employees and developments with the virus that have made COVID-19 more contagious
16 and easier to transmit. *Id.* at 33. Although the City determined that it would impose an
17 undue hardship to allow Dixson to continue performing her duties unvaccinated on an
18 ongoing basis, the City offered to accommodate her for a limited period through
19 December 15, 2021. *Id.* at 36. During this intermediate period, Dixson was required to
20 take a COVID-19 test two times a week at the beginning of her shift under the
21 supervision of her supervisor. *Id.* at 34-36. She was also required to wear an N-95 mask
22 at all times and eat in her vehicle, outside, or off site. *Id.*

23 Dixson received a Notice of Intent to Separate on February 2, 2022, after which
24 she requested, and received, a Loudermill hearing. *Id.* at 43. At the expiration of the
25 extended MOU period, Dixson had not become fully vaccinated. Dixson was separated
26 from the City effective February 16, 2022.

27 On December 15, 2022, Dixson filed her complaint in federal court against “the
28 ORDER – 2

City of Issaquah Police Department, Mayor Mary Lou Pauly, Wally Bobkiewicz, and DOES 1-25." Dkt. # 1. She asserted three causes of action: (1) a failure to accommodate her religious beliefs as required by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e; (2) a parallel claim under Washington's Law Against Discrimination, RCW 49.60; and (3) a due process claim under 42 U.S.C. § 1983 based on alleged violations of RCW 41.12.050 and the Issaquah Civil Service. *Id.* Dixson subsequently stipulated to the dismissal of Defendants Pauly and Bobkiewicz. Dkt. # 14.

III. LEGAL STANDARD

On a motion for summary judgment, the court must draw all inferences from the admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party must initially show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The opposing party must then show a genuine issue of fact for trial. *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The court defers to neither party in resolving purely legal questions. See *Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 942 (9th Cir. 1999).

IV. DISCUSSION

I. The Issaquah Police Department Cannot Be Sued

The Issaquah Police Department is the only remaining defendant and argues that it is not an entity that can sue or be sued. Dkt. # 21 at 15. “The capacity of a governmental body to be sued in the federal courts is governed by the law of the state in which the district court is held.” *Bondurant v. City of Battleground*, 2016 WL 6973267, at *7 (W.D. Wash. Nov. 28, 2016) (quoting *Avery v. Cnty. of Burke*, 660 F.2d 111, 113-14 (4th Cir.

1 1981)). The Court agrees with the Issaquah Police Department that it is not a proper
 2 defendant and that Washington courts have reached this conclusion on several occasions.
 3 *Lumsden v. City of Bremerton Police Dep’t*, 2020 WL 2512880, at *2 (W.D. Wash. May
 4 15, .2020); *Bondurant*, 2016 WL 6973267, at *7; *Runnels v. City of Vancouver*, 2011 WL
 5 1584442, at *10–11 (W.D. Wash. Apr. 27, 2011) (citing *Nolan v. Snohomish Cty.*, 59
 6 Wn. App. 876, 883 (1990)) (“because current Washington case law indicates that a police
 7 department is not a legal entity with the capacity to be sued, Defendants are entitled to
 8 summary judgment of [the plaintiff’s] claims against [the police department].”)

9 Dixson responds that she named the City of Issaquah as a party within her
 10 Complaint and referred to “the City” within the body of the complaint and other
 11 pleadings. Dkt. # 26 at 15. She also argues that the Issaquah Police Department has not
 12 claimed a failure of service against the City and that this defect is curable through
 13 amendment. *Id.* at 15-16.

14 However, Dixson has not created a dispute of fact as to whether she has named or
 15 served a proper defendant. First, Dixson did not include the City of Issaquah in her
 16 complaint caption, and the docket in this matter shows the City is not listed as a party to
 17 this case. Second, Dixson also did not obtain or serve a summons that named the City of
 18 Issaquah, and thus, she did not properly serve the City with process.¹ *See* Dkt. # 3. Under
 19 Rule 4(a), the summons must bear the name of the party to whom it is directed. Fed. R.
 20 Civ. P. 4(a). Finally, the issue was specifically raised in Defendant’s amended answer
 21 which states that “[p]laintiff has failed to name the proper party as defendant, as the
 22 Issaquah Police Department is not a legal entity capable of being sued.” Dkt. # 10 at 6.

23 Because the City of Issaquah Police Department lacks the capacity to be sued, it
 24 must be dismissed from this action. *See Shaw v. City of Bremerton Police Dep’t*, 2020

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 26 ¹ Although Dixson did serve the Mayor, the summons makes clear that the Mayor was
 27 sued and served as an individual, and not on behalf of the City of Issaquah. Dkt. # 3.
 28 Dixson then dismissed her claims against the Mayor with prejudice. Dkt. # 14.

1 WL 816046, *2 (W.D. Wash. Feb. 19, 2020) (stating that the corrective for the failure to
 2 name the correct party is the dismissal of the wrongly-named party).

3 **II. Leave to Amend**

4 In her response to the City of Issaquah Police Department's motion for summary
 5 judgment, Plaintiff asks for leave to amend to substitute the City of Issaquah. Dkt. # 26 at
 6 16.

7 “[W]hen a party seeks to amend a pleading after the pretrial scheduling order's
 8 deadline for amending the pleadings has expired, the moving party must satisfy the ‘good
 9 cause’ standard of Federal Rule of Civil Procedure 16(b)(4), which provides that ‘[a]
 10 schedule may be modified only for good cause and with the judge’s consent,’ rather than
 11 the liberal standard of Federal Rule of Civil Procedure 15(a).” *In re W. States Wholesale*
 12 *Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013). This good cause standard
 13 “primarily considers the diligence of the party seeking the amendment.” *Johnson v.*
 14 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “If the moving party ‘was
 15 not diligent, the inquiry should end.’ ” *Neidermeyer v. Caldwell*, 718 F. App’x 485, 489
 16 (9th Cir. 2017), *cert. denied*, 17-1490, 2018 WL 2046246 (U.S. Oct. 1, 2018)
 17 (quoting *Johnson*, 975 F.2d at 609).

18 As noted, the City of Issaquah Police Department filed its amended answer to
 19 Dixson's complaint on February 9, 2023 asserting affirmative defenses including failure
 20 to name a proper party as a defendant. Dkt. # 10 at 6. The deadline to amend pleadings
 21 was August 2, 2023. Dkt. # 12. However, Dixson only now seeks to amend the pleading
 22 in response to the motion for summary judgment and has offered no explanation for the
 23 undue delay. Therefore, the Court finds that Dixson has not been diligent in seeking
 24 amendment and the inquiry ends there. *Neidermeyer*, 718 F. App’x at 489.

25 **V. CONCLUSION**

26 Therefore, it is hereby **ORDERED** that the City of Issaquah Police Department's
 27 motion for summary judgment, Dkt. # 21, is **GRANTED**.

1 The Clerk shall enter a **JUDGMENT** and close the case.
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4 DATED this 9th day of January, 2024.
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The Honorable Richard A. Jones
United States District Judge